

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

v.

RAYOVAC CORPORATION,

Defendant.

Civil Action No. 03-CV-12428-WGY

**PLAINTIFF'S LOCAL RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF BRAUN GMBH'S
MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

In support of its Motion for Partial Summary Judgment of Infringement, Plaintiff Braun GmbH, pursuant to Local Rule 56.1, submits this statement of material undisputed facts.

Respectfully submitted,

Braun GmbH

By its attorneys,

/s/ Dalila Arguez Wendlandt
William L. Patton (BBO #391640)
Dalila Arguez Wendlandt (BBO #639280)
Dalila.Wendlandt@ropesgray.com
ROPES & GRAY
One International Place
Boston, MA 02110
Telephone: (617) 951-7000
Facsimile: (617) 951-7050

Stanley D. Liang (admitted *Pro Hac Vice*)

ROPES & GRAY LLP
1251 Avenue of the Americas
New York, NY 10021

August 22, 2005

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On January 27, 1998, U.S. Patent No. 5,711,328 (the “328 Patent”) issued. See Declaration of Dalila Arguez Wendlandt In Support Of Braun GmbH’s Motion for Partial Summary Judgment Of Infringement (“Wendlandt Decl.”), Exhibit A. The patent is assigned to Braun GmbH. See id., Exhibit E.

2. Rayovac Corporation sells three accused products in the United States. The three products include: two “Titanium Smart System” electric shaving systems – a men’s rotary system with product designation R-9500 and a men’s foil system with product designations MS-5500 and MS-5700; and one “Smooth & Silky Titanium System”, which is a women’s foil system with product designation WDF-7000CS (the “WDF-7000CS cleaning system”). See id., Exhibits B-D. Each of these accused products includes an electric shaver and a cleaning system.

3. The cleaning systems of these products are virtually identical, differing only in features not pertinent to this action. Deposition of James Chasen on May 5, 2005 (“Chasen Dep.”) at 89-90; Second Expert Report of Samuel Phillips (“Phillips 2nd Rep.”) at ¶17.

2. All of Rayovac’s cleaning systems include an upper housing and a lower reservoir where cleaning fluid is kept. Chasen Dep. at 85-90; Phillips 2nd Rep. at ¶19. The “cleaning base” supports the shaver while conducting a “cleaning cycle.” See Wendlandt Decl., Exhibit J at 8; Chasen Dep. at 85.

3. The shaving head of the shaver is supported by a fluid injection manifold, ports in the fluid manifold and supporting structures. See Declaration Of Professor Samir Nayfeh In Support Of Braun GmbH’s Motion For Partial Summary Judgment Of

Infringement (“Nayfeh Decl.”) at ¶9. For example, in the men’s rotary cleaning system, three ports in the manifold and a post on the basin of the cleaning system support the shaving head. Chasen Dep. at 85-86. The ports, the manifold, and the post in the bottom of the basin form the “unit” that consumers “put it [the shaver head] into.” *Id.* at 85.

4. During cleaning, the cleaning fluid is fed by a pump through a conduit to the manifold and ports and thereafter injected into the hair pocket of the shaving head of the shaver. *Id.* at 45; Phillips 2nd Rep. at ¶20. The fluid then drains into the basin and is channeled through a filter and back into the cleaning base reservoir. Chasen Dep. at 64, 87; Phillips 2nd Rep. at ¶20. The basin will retain a small amount of fluid at the end of each cleaning cycle. Chasen Dep. at 65.

4. In each accused product, the manifold, ports and supporting surfaces are above the cleaning fluid level in the cleaning reservoir during cleaning. Chasen Dep. at 67-68, 86; Phillips 2nd Rep. at ¶19. In particular, the cradle structure 3a, 3b and 3c is located above the cleaning fluid level in the container 5. Wendlandt Decl. at Exhibits B (Figure 1a), C (Figure 2a), D (Figure 3a). Following cleaning, drying occurs with a fan. Chasen Dep. at 87-88; Phillips 2nd Rep. at ¶21.

5. The product packaging for the MS-5500 depicts fluid swirling around the shaver head. Wendlandt Decl., Exhibit K.